A.F.R.

04-07-2006

(213)

HIGH C.OURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 92 of 2003

CORAM: Hon'ble Shri S.R.Nayak, Chief Justice &
Hon'ble Shri D.R.Deshmukh, J.

Petitioner : P. Sanyasi, S/o Late P. Raminaidu, aged about 64 years, Head Clerk, Office of the Station Manager, South Eastern Railway, Durg (C.G.), R/o Karmcharinagar, near House No.B-45, Sikolabhata, Durg (C.G.).

Versus

Respondents :
1. Secretary, Ministry of Railways, Rail Bhavan, New Delhi.
2. The General Manager, S. E. Railway, Garden Reach, Calcutta.
3. The Divisional Railway Manager, S.E. Railway, Bilaspur (C.G.)
4. Additional Divil. Railway Manager, S.E.Railway, Bilaspur (C.G.)
5. Sr. Divisional Commercial Manager, S.E.Railway, Bilaspur (C.G.)
6. Sr. Divil. Personnel Officer, S.E.Railway, Bilaspur (C.G.)
7. Assist. Personnel Officer (Welfare) S.E.Railway, Bhilai, Distt. Durg (C.G.)
8. Shri J.Tirkey, Assist. Commercial Manager, S.E.Railway, Bilaspur (C.G.)

Smt. Smita Ghai, learned counsel for the petitioner.
Shri P.S.Koshy, learned counsel with Shri Naha Rai for the respondents.

ORAL ORDER
(Passed on 04.07.2006)

The following oral order of the Court was passed by S.R.NAYAK, C.J.

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The petitioner while serving as first Division Clerk in the establishment of Railways, the Senior Divisional Commercial Manager, South Eastern Railway, Bilaspur, the 5th respondent herein, initiated departmental proceedings against the petitioner by issuing a charge memo alleging that the petitioner secured the job falsely claiming that his date of birth is 6.6.1938, whereas, his actual date of birth is 6.6.1933. The 5th respondent, having issued the charge memo but without concluding the enquiry contemplated under the M. P. Civil Services (Classification, Control and Appeal) Rules, by his order dated 3.3.1994, terminated the services of the petitioner. The petitioner, feeling aggrieved by the said order of the 5th respondent, instituted Original Application No.173/1994. That application was allowed by the Central Administrative Tribunal (for short 'C.A.T.') by its order dated 8.7.1994 and the C.A.T. set aside the order dated 3.3.1994. While doing so, the C.A.T., however, permitted the Department to conduct the enquiry against the petitioner by fixing a time-frame of 6 months. The petitioner was also directed to fully cooperate with the enquiry. The order made by the C.A.T. on 8.7.84 has become final, and therefore, the Department and the petitioner are bound by the same.

2. As permitted by the C.A.T., the 5th respondent proceeded to conduct and conclude the enquiry. On the basis of oral and documentary evidence led in the enquiry, the 5th respondent found the petitioner to be guilty of the misconduct alleged against him and thought it fit to impose the penalty of removal from service as a disciplinary measure. Accordingly, the 5th respondent by his order dated 16.1.1995 removed the petitioner from service as a disciplinary measure. The challenge made by the petitioner by way of appeal

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within the Department also went in vain. That led to the petitioner again instituting Original Application No.421/1995 before the C.A.T. assailing the order of the 5th respondent, as affirmed by the Appellate Authority, on various grounds. The C.A.T. without finding any merit in the Original Application, by its order dated 21.4.2002, dismissed the application, That is how, this matter is landed before this Court under Articles 226/227 of the Constitution of India.

3. We have heard learned counsel for the parties. Mrs. Smitha Ghai, learned counsel for the petitioner placed three fold contentions:

(i) that after the disposal of O.A.No.173/1994 by the C.A.T. on 8.7.1994 though the petitioner reported for duty and submitted his reporting letter to the Station Manager, South Eastern Railway, Durg on 10.7.1994, he refused to permit him to report for duty. It was also contended that the petitioner was not paid allowances admissible to him;

(ii) that the relevant documents sought by the petitioner were not furnished to him, and therefore, the enquiry conducted by the disciplinary authority is vitiated; and

(iii) that the 5th respondent is not the competent authority to impose the penalty of removal from service, and the only competent authority to impose such penalty on the petitioner is the General Manager of the South Eastern Railways, in terms of the instructions contained in the Railway Board's letter No.E(D&A) 63 RG 6-23 dated 21.2.1964.

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4. Shri P. S. Koshy, learned counsel for the respondents, per contra, while supporting the impugned disciplinary action and the Order of the C.A.T., would contend that notwithstanding repeated directions issued by the Department to produce the matriculation certificate to show the date of birth of the petitioner is 6.6.1938, the petitioner has failed to produce that certificate and on the other hand, the documents produced in the enquiry by the Department would clearly go to show that the actual date of birth of the petitioner is 6.6.1933 and not 6.6.1938, and therefore, there is no failure of justice.

5. Having heard the learned counsel for the parties, the point that arises for decision is whether the petitioner has made out any permissible ground on the basis of which we could possibly step in under Article 226 to interfere with the disciplinary action taken against the petitioner-delinquent. It is true that the scope of judicial review in the matter of departmental enquiry is very much limited and circumscribed by a catena of decisions handed down by the Apex Court and High Courts. It is quite often said and reiterated that the reviewing Court would not go into the question of adequacy and sufficiency of evidence on the basis of which factual findings are recorded by enquiring and/or disciplinary authority. It is also well settled that strict rules of evidence have no application in conduct of departmental enquiry. At the same time, it is also well settled that before imposing a punishment on a delinquent as a disciplinary measure, the Disciplinary Authority is required to practise the principle of fair play in action and strictly adhere to principles of natural justice. It is also well settled that the findings recorded by

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the enquiring authority and/or disciplinary authority should be based on objective facts and not surmises or conjectures. It is also well settled that disciplinary action could be initiated only by a competent authority in terms of the service rules governing conduct of departmental enquiry.

6. In the premise of these norms and general principles applicable to the conduct of departmental enquiry, when we look at the facts of this case, we should say that there is a serious lapse on the part of the appellate authority as well as the C.A.T. in not adverting to the competency of the 5th respondent to initiate departmental enquiry against the petitioner. The petitioner in his representation sought production of certain documents which included initial appointment order of the petitioner issued in the year 1961. Admittedly, this document was not made available to the petitioner. This fact is borne out from the deposition of S.V.S.Murthy who was examined on behalf of the Department. In his evidence, it is stated that the old records of 1961 are not available and are not traceable. Therefore, it is not clear as to who had appointed the petitioner initially as a Class-IV employee. If that is the state of affairs, in our considered opinion, the administrative instruction issued by the Railway Board in its letter No.E(D&A) 63 RG 6-23 dated 21.2.1964 squarely applies. The said circular directs that in the situation of non-availability of appointment orders, the General Manager should be treated as an appointing authority, as far as disciplinary matters are concerned. In that view of the matter, this legal question ought to have been considered by the Tribunal having secured all relevant materials. Since that question

is not dealt with by the C.A.T., only on that ground, the order made by it could not be sustained.

7. However, we make it clear that the other grounds urged before us by the learned counsel for the petitioner do not merit our acceptance. Although in paragraph 4.5 of the Original Application No.421/1995, it was urged by the petitioner that though he reported for duty on 10.7.1994, the Station Manager, South Eastern Railways, Durg refused to take him to duty, meeting that allegation in paragraph 4(v) of the return, it is stated by the Railways that Station Manager, Durg was not a competent authority to reinstate the petitioner into service and only the Sr. Divisional Personnel Officer, South Eastern Railway, Bilaspur was competent authority to reinstate him. Meeting the allegation of the petitioner that he was not reinstated into service and not paid consequential and admissible benefits, in paragraph 4(vii) of the return, it is stated that as per order of the C.A.T. dated 28.7.1994 in O.A.No.173/94, the petitioner was reinstated into service in his former post with all consequential benefits. This factual assertion made on oath by the Railways is not contested by the petitioner by filing any rejoinder. We have no good reason to doubt the integrity of the above statement made by the Railways.

8. With regard to non-furnishing of all relevant documents, suffice it to state that the witness who was examined on behalf of the Railways has deposed that old records of the year 1961 are not available and traceable. It appears that those documents being very old documents must have been lost and destroyed. Be that as it may, since it is the specific case of the petitioner that his actual date of

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birth was 6.6.1938, there was no difficult for the petitioner to produce either original certificate issued by the school authorities and if it is lost by the petitioner, as claimed by his counsel during the course of hearing, he could have obtained the duplicate certificate from the school authorities and produced the same. From the side of the petitioner, there is no evidence at all to support his claim. On the other hand, the documents collected by the Department to which reference is made in the order of the 5th respondent dated 16.1.1995 would *prima facie* show that the date of birth of the petitioner is 6.6.1933.

9. In the result and for the foregoing reasons, we allow the writ petition and set aside the order of the Tribunal and remand the proceedings to the C.A.T. with a direction to consider the plea raised by the petitioner with regard to the competency of the 5th respondent to initiate disciplinary proceedings and pass the order dated 16.1.1995, after giving opportunity to both the sides. We permit the both the sides to file additional pleadings as well as documents in support and opposition of the jurisdictional plea raised by the petitioner as a ground of attack.

10. In the facts and circumstances of the case, the parties shall bear their respective costs. The C.A.T. shall dispose of the O.A. within a period of three months from the date of receipt of a copy of this Order.

Sd/-
Chief Justice

Sd-/
Dilip Raosaheb Deshmukh
Judge

Anjani